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C O N F I D E N T I A L SECTION 01 OF 02 THE HAGUE 001730

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DEPARTMENT FOR S/WCI - PROSPER, EUR - BOGUE, EUR/SCE -  
JONES/GREGORIAN, L/UNA - MATHIAS, L/EUR - LAHNE, INR/WCAD -  
SPRIGG, USUN - ROSTOW

E.O. 12958: DECL: 1.6 FIVE YEARS AFTER CLOSURE OF ICTY  
TAGS: [PREL](#) [PHUM](#) [BK](#) [HR](#) [SR](#) [NL](#) [ICTY](#)  
SUBJECT: ICTY: UK DRAFT UNSCR ON THE COMPLETION STRATEGY

REF: A. (A) JOHNSON-ROSTOW E-MAIL 6/30/03

- [1](#)B. (B) THE HAGUE 1510
- [1](#)C. (C) STATE 194768

Classified By: Legal Counselor Clifton M. Johnson per 1.5(b) and (d).

[1](#)1. (C) International Criminal Tribunal for the Former Yugoslavia (ICTY) President Theodor Meron passed to embassy legal counselor the draft of a Security Council resolution developed by the UK that would require the ICTY Prosecutor to implement key elements of the Tribunal's so-called completion strategy. As noted ref a, Meron explained that the draft originated from UK FCO Legal Adviser Wood and was subsequently refined to reflect Meron's input. The text at para 2 below, reflecting some additional input from Meron, was passed back to the UK last week. Some Embassy additions are suggested in paras 3 and 4.

[1](#)2. (C) Begin text of draft UNSCR:

"The Security Council,

Recalling the statement made by the President of the Security Council on 23 July 2002 (S/PRST/2002/21),

Strongly reaffirming that the Tribunal should concentrate its work on the prosecution and trial of the civil, military and paramilitary leaders suspected of being responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991, rather than minor actors,

Endorsing once more the broad strategy of transferring cases involving intermediary and lower-level accused to competent national jurisdictions as likely to be in practice the best way of allowing the Tribunal to achieve its current objective of completing (investigations by 2004,) all trial activities at first instance by 2008 (and appeals, reviews and other proceedings around 2010) (the "completion strategy") (S/2002/678, Annex)

Having heard the joint presentation by the High Representative to Bosnia and Herzegovina and the President of the International Criminal Tribunal for the former Yugoslavia ("the Tribunal"),

Having taken note of the recommendation of the Tribunal with regard to the creation, as proposed by the High Representative, of a special Chamber, within the State Court of Bosnia and Herzegovina, to deal with serious violations of international humanitarian law,

[1](#)1. Welcomes with satisfaction the decision of the Steering Board of the Peace Implementation Council of 12 June 2003 endorsing the approach outlined by the High Representative concerning the establishment of a War Crimes Chamber within the State Court of Bosnia and Herzegovina;

[1](#)2. Urges the High Representative to establish the said War Crimes Chamber as expeditiously as possible;

[1](#)3. Notes that a Donors' Conference will be held in The Hague on . . . 2003 with a view to raising funds to finance the establishment of the proposed War Crimes Chamber and, to that end, invites States and relevant international and regional organizations to contribute funds as well as to provide qualified personnel to assist the Chamber in its work;

[1](#)4. Notes the statement by the President of the Tribunal that an essential prerequisite to achieving the objectives of the completion strategy is the establishment and early functioning of the War Crimes Chamber and that as soon as the Chamber has begun to function, the Tribunal intends, pursuant to its Rules of Procedure and Evidence, to consider referring cases of lower or intermediate-level accused to the Chamber, as well as to other competent national jurisdictions as appropriate;

[1](#)5. Notes with satisfaction the measures undertaken by States of the former Yugoslavia with the support of other States and relevant international and regional organizations,

to strengthen their national judicial systems in order to facilitate the implementation of this policy and encourages further such measures and support;

16. Further notes that since the Presidential statement of 23 July 2003, (19) indicted persons remain at large and (. . .) persons previously indicted have been taken into custody, and that therefore issuing further indictments, except in cases of civilian, military and paramilitary leaders at the highest level, would be incompatible with achieving the objectives of the completion strategy;

17. Aware that the Tribunal will be in a position to complete its historic mission only with the apprehension and prosecution of Radovan Karadzic and Ratko Mladic and calls upon all States to render all necessary assistance to the Tribunal in its efforts to bring these and all other accused persons to justice.

18. Requests the Prosecutor to henceforth concentrate on issuing indictments only in the exceptional circumstances specified in paragraph 6 above, on considering the referral of cases to competent national jurisdictions as indicated in paragraph 5 above, and to use, in the interests of efficiency and justice, all appropriate means at her disposal to reduce the length and complexity of all cases before the Tribunal.

19. Requests the President of the Tribunal to use his best efforts to ensure that the objectives of the completion strategy are achieved.

110. (Decides to remain actively seized of the matter.)

End text of draft UNSCR.

13. (C) Comment: The draft resolution would give a UNSC imprimatur to the establishment of the war crimes chamber in the new Bosnia State Court and restrict the investigative mandate of the Office of the Prosecutor (OTP), marking two steps forward toward meeting the goals of the completion strategy. However, the resolution is an opportunity for the Council to emphasize other aspects of the ICTY's work that are also critical to accomplishment of the completion strategy goals. For instance, the draft pays limited attention to obligations of states to cooperate with the Tribunal, an omission which would be especially striking given the Tribunal's recent opinions on Belgrade cooperation (ref b). The resolution could draw upon UNSCR 1423 (2002), operative paragraph 3, which "underlines that full cooperation by States and entities with the International Tribunal includes, inter alia, the surrender for trial of all persons indicted by the Tribunal and provision of information to assist in Tribunal investigations." The Council could also reaffirm its support for the mission of the ICTY, in particular its contributing role -- as emphasized in this year's guilty plea by Biljana Plavsic -- to peace and reconciliation in the Balkans. Finally, the draft correctly identifies "the length and complexity" of cases before the Tribunal as a problem posed to the completion strategy, but to be fair, the resolution could also note that the chambers play a role in ensuring efficient proceedings as well.

14. (C) Comment, cont'd: The proposed draft UNCSCR focuses solely on the Bosnia State Court and the scope of the Prosecutor's mandate. It does not address other issues flagged in Ref C such as the UK initiative to split the ICTY/ICTR prosecutorial functions and create a new chief prosecutor position for the ICTR and the extension of Chief Prosecutor Del Ponte's ICTY mandate to the end of 2004. If a decision is made to include all of these issues in a single resolution, then that resolution would need to be issued in September (given the expiration of the Prosecutor's mandate in September), and it would make sense, if possible, to advance President Meron and High Commissioner Ashdown's joint presentation on the Sarajevo war crimes chamber to September as well. If we pursue two separate resolutions, then the current notional calendar for Meron's visit -- joint address with HR Ashdown on October 8, followed by his own report to the UNGA on the 9th and presentation of the formal ICTY report on the 10th -- would seem to work. Would appreciate USUN and the Department's understanding of the schedule of these events and whether this is likely to hold or whether the October 8 joint presentation will be advanced to September. End comment.

BAILY